



August 13, 2002

Mr. Mark M. Donheiser
Mathis & Donheiser
3900 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201

OR2002-4448

Dear Mr. Donheiser:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167253.

Mr. Randall Mathis, of the law firm Mathis & Donheiser, received a request that one of the firm's clients, Judge Robert Jenevein, provide the requestor a print-out of certain e-mails to or from the Judge concerning certain other named individuals. You assert that the requested information is not subject to the Public Information Act (the "Act"). You alternatively contend that the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.109, and 552.305(a). We have considered your arguments.

The Act applies only to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). The Act does not apply to records of the judiciary because the meaning of "governmental body" under the Act does not include the judiciary. *See* Gov't Code § 552.003(1)(B). Thus, access to information that is "collected, assembled or maintained by or for the judiciary" is not governed by the Act, but rather is governed by rules adopted by the Texas Supreme Court and other applicable laws and rules. Gov't Code § 552.0035(a); *see also* Tex. Sup. Ct. R. 12; *Ashpole v. Millard*, 778 S.W.2d 169, 170 (Tex. App.--Houston [1st Dist.] 1989, no writ) (public has right to inspect and copy judicial records subject to court's inherent power to control public access to its records). Consequently, records of the judiciary, that is, records that concern judicial proceedings, need not be released under the Act. *See* Attorney General Opinion DM-166 (1992), Open Records Decision No. 25 (1974). Furthermore, access to a "judicial record," that is, a record maintained by or for a court or judicial agency in its regular course of business but not

pertaining to its adjudicative function, is governed by Rule 12 of the Rules of Judicial Administration. *See* Tex. R. Jud. Admin. 12.2(d). Accordingly, the Act does not require the judge, or you, on behalf of the judge, to release the requested information to the requestor.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).


Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

¹Based on our resolution of the issue, we need not consider your arguments under sections 552.101, 552.109, and 552.305.

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 167253

c: Mr. Braden Sparks
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Dallas, Texas 75225